A bill to be entitled
An act relating to workers’ compensation; amending s. 440.02, F.S.; redefining the term “specificity”; amending s. 440.093, F.S.; conforming a provision to changes made by the act; amending s. 440.105, F.S.; revising a prohibition against persons receiving certain fees, consideration, or gratuities under the Workers’ Compensation Law; amending s. 440.11, F.S.; deleting an exception from fellow-employee immunities from liability; amending s. 440.15, F.S.; increasing the maximum number of weeks of benefits payable for temporary total disability, temporary partial disability, and temporary total disability; revising the timeframe under which a carrier must provide certain notice to an employee’s treating doctor; specifying permanent impairment benefits payable to certain employees who have not reached overall maximum medical improvement within a certain timeframe; requiring that such impairment benefits be credited against subsequently due indemnity benefits; deleting a requirement that temporary disability benefits cease and that the injured worker’s permanent impairment be determined after a certain timeframe; creating s. 440.1915, F.S.; requiring injured employees and other claimants to sign and attest to a specified statement relating to the payment of attorney fees before engaging an attorney or other representative for certain purposes; prohibiting such injured employees or claimants from proceeding with a petition for
benefits, except pro se, until the signature is obtained; amending s. 440.192, F.S.; revising conditions under which a petition for benefits or portion of the petition must be dismissed by the Office of the Judges of Compensation Claims or the assigned judge of compensation claims; revising the information required in the petition; providing construction; requiring claimants and their attorneys to make a good faith effort to resolve the dispute before filing a petition; requiring that petitions include evidence demonstrating such good faith effort; authorizing judges of compensation claims to determine if such effort was made; requiring the judge of compensation claims to dismiss the petition, and authorizing the imposition of sanctions, if he or she finds such effort was not made; providing that certain dismissals are without prejudice; specifying timeframes within which a judge of compensation claims must enter an order on certain motions to dismiss; revising conditions under which judges of compensation claims are prohibited from awarding attorney fees; amending s. 440.20, F.S.; providing that certain settlement agreements need not be approved by the judge of compensation claims; revising the information required to be submitted by the parties to such a settlement; revising the timeframe under which a lump-sum settlement amount must be paid; amending s. 440.25, F.S.; requiring that the pretrial outline under a certain expedited dispute resolution process
contain a specified personal attestation by the
claimant’s attorney relating to hours to date;
revising the timeframe and conditions under which
attorney fees attach to certain proceedings; amending
s. 440.34, F.S.; authorizing judges of compensation
claims to award attorney fees to claimants to be paid
by the employer or carrier; specifying applicability
of attorney fee provisions to attorney fees payable by
employers or carriers; providing that employers and
carriers are not responsible for costs unless approved
by the judge of compensation claims or a court having
jurisdiction; deleting a prohibition against a judge
of compensation claims’ approval of agreements
providing for attorney fees in excess of certain
amounts; requiring that retainer agreements be filed
with the office; specifying requirements for attorneys
of injured employees in reporting attorney fees;
revising attorney fees that are a lien upon payable
compensation; deleting a certain limitation on
retainer agreements; specifying claimant attorney
hours for which attorney fees are not payable by
employers or carriers; revising circumstances under
which claimants are entitled to recover attorney fees
from carriers or employers; revising the timeframe and
conditions under which attorney fees attach;
specifying a limit on the hourly rates of attorney
fees awarded to injured employees or dependents;
specifying a condition before such attorney fees may
be awarded; deleting a prohibition against a judge of
compensation claims entering an order approving
certain retainer agreements; revising circumstances
under which a judge of compensation claims may award
alternative attorney fees payable by the carrier or
employer; providing construction; amending s. 440.491,
F.S.; providing that an employee who refuses certain
training and education forfeits any additional
compensation, rather than payment for lost wages;
conforming a provision to changes made by the act;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (40) of section 440.02, Florida
Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the
context clearly requires otherwise, the following terms shall
have the following meanings:

(40) “Specificity,” “specific,” or “specifically”
“Specificity” means, for purposes of determining the adequacy of
a petition for benefits under s. 440.192, information on the
petition for benefits sufficient to put the employer or carrier
on notice of the exact statutory classification and outstanding
time period for each requested benefit, the specific amount of
each requested benefit, the calculation used for computing the
specific amount of each requested benefit, and the benefits being
requested and includes a detailed explanation of any such
benefit received that should be increased, decreased,
changed, or otherwise modified. If the petition is for medical
benefits, the information must include specific details as to why such benefits are being requested, including details demonstrating that such benefits have specifically been denied by the adjuster responsible for determining whether benefits are payable to the claimant; why such benefits are medically necessary and why current treatment, if any, is not sufficient. Any petition requesting alternate or other medical care, including, but not limited to, petitions requesting psychiatric or psychological treatment, must specifically identify the physician, as defined in s. 440.13(1), who is recommending such treatment. A copy of a report from such physician making the recommendation for alternate or other medical care must also be attached to the petition and must include specific allegations and statements of fact supporting the specific denial by the adjuster handling payment of benefits to the injured employee. A judge of compensation claims may not order such treatment if a physician is not recommending such treatment.

Section 2. Subsection (3) of section 440.093, Florida Statutes, is amended to read:

440.093 Mental and nervous injuries.—
(3) Subject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the injured employee’s physical injury or injuries, which shall be included in the maximum number of period of 104 weeks as provided in s. 440.15(2), (4), and (13). Mental or nervous injuries are compensable only in accordance with the terms of this section.
Section 3. Paragraph (c) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Except for an attorney retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the injured employee, it is unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.

Section 4. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death,
except as follows:

(a) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee.

(b) When an employer commits an intentional tort that causes the injury or death of the employee. For purposes of this paragraph, an employer’s actions are deemed to constitute an intentional tort and not an accident only when the employee proves, by clear and convincing evidence, that:

1. The employer deliberately intended to injure the employee; or

2. The employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.

The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such
employee is acting in furtherance of the employer’s business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities do not apply shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer’s business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days’ imprisonment as set forth in s. 775.082. The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the board of county commissioners.

Section 5. Paragraph (a) of subsection (2), paragraph (d) of subsection (3), paragraphs (a) and (e) of subsection (4), and subsection (6) of section 440.15, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

440.15 Compensation for disability.—Compensation for
disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7) and (13), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages must be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches overall the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits must cease and the injured worker’s permanent impairment must be determined.

(3) PERMANENT IMPAIRMENT BENEFITS.—

(d) After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in paragraph (b). If the certification and evaluation are performed by a doctor other than the employee’s treating doctor, the certification and evaluation must be submitted to the treating doctor, the employee, and the carrier within 10 days after the evaluation. The treating doctor must indicate to the carrier agreement or disagreement with the other doctor’s certification and evaluation.

1. The certifying doctor shall issue a written report to the employee and the carrier certifying that maximum medical
improvement has been reached, stating the impairment rating to
the body as a whole, and providing any other information
required by the department by rule. The carrier shall establish
an overall maximum medical improvement date and permanent
impairment rating, based upon all such reports.

2. Within 14 days after the carrier’s knowledge of each
maximum medical improvement date and impairment rating to the
body as a whole upon which the carrier is paying benefits, the
carrier shall report such maximum medical improvement date and,
when determined, the overall maximum medical improvement date
and associated impairment rating to the department in a format
as set forth in department rule. If the employee has not been
certified as having reached overall maximum medical improvement
before the expiration of 254 98 weeks after the date temporary
disability benefits begin to accrue, the carrier shall notify
the treating doctor of the requirements of this section.

3. If an employee receiving benefits under subsection (2),
subsection (4), or both subsections (2) and (4) has not reached
overall maximum medical improvement before receiving the maximum
number of weeks of temporary disability benefits described in
subsection (13), the employee must receive benefits under this
subsection for an injury resulting from the accident in
accordance with the estimated impairment rating for the body as
a whole; or, if multiple injuries are sustained, in accordance
with the estimated combined impairment ratings for the body as a
whole in the 1996 Florida Uniform Permanent Impairment Rating
Schedule. Impairment benefits received under this subparagraph
must be credited against indemnity benefits subsequently due to
the employee.
(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsections (6), subsection (7), and (13), in case of temporary partial disability, compensation must shall be equal to 80 percent of the difference between 80 percent of the employee’s average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee’s average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer’s work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are shall be payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee’s ability to return to work.

(e) Subject to subsections (6), (7), and (13), such benefits must shall be paid during the continuance of such disability, not to exceed a period of 104 weeks, as provided by this subsection and subsection (2). Once the injured employee

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reaches the maximum number of weeks, temporary disability benefits cease and the injured worker’s permanent impairment must be determined. If the employee is terminated from postinjury employment based on the employee’s misconduct, temporary partial disability benefits are not payable as provided for in this section. The department shall by rule specify forms and procedures governing the method and time for payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

(6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee refuses employment suitable to the capacity thereof, offered to or procured therefor, such employee shall not be entitled to any compensation at any time during the continuance of such refusal unless at any time in the opinion of the judge of compensation claims such refusal is justifiable. Time periods for the payment of benefits in accordance with this section shall be counted in determining the limitation of benefits as provided for in subsection (13) paragraphs (2)(a), (3)(c), and (4)(b).

(13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of benefits received by an employee for temporary total disability payable pursuant to subsection (2), temporary partial disability payable pursuant to subsection (4), and temporary total disability payable pursuant to s. 440.491 may not exceed 260 weeks.

Section 6. Section 440.1915, Florida Statutes, is created to read:

440.1915 Notice regarding payment of attorney fees.—Before
engaging an attorney or other representative for services related to a petition for benefits under s. 440.192 or s. 440.25, an injured employee or any other party making a claim for benefits under this chapter through an attorney shall attest with his or her personal signature that he or she has reviewed, understands, and acknowledges the following statement, which must be in at least 14-point bold type: “THE WORKERS’ COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT.” If the injured employee or other party does not sign or refuses to sign the document attesting that he or she has reviewed, understands, and acknowledges the statement, the injured employee or other party making a claim under this chapter may not proceed with a petition for benefits under s. 440.192 or s. 440.25, except pro se, until such signature is obtained.

Section 7. Subsections (2), (4), (5), and (7) of section 440.192, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

440.192 Procedure for resolving benefit disputes.—

(1) Any employee may, for any benefit that is ripe, due, and owing, file with the Office of the Judges of Compensation Claims a petition for benefits which meets the requirements of
this section and the definition of specificity in s. 440.02. An employee represented by an attorney shall file by electronic means approved by the Deputy Chief Judge. An employee not represented by an attorney may file by certified mail or by electronic means approved by the Deputy Chief Judge. The department shall inform employees of the location of the Office of the Judges of Compensation Claims and the office’s website address for purposes of filing a petition for benefits. The employee shall also serve copies of the petition for benefits by certified mail, or by electronic means approved by the Deputy Chief Judge, upon the employer and the employer’s carrier. The Deputy Chief Judge shall refer the petitions to the judges of compensation claims.

(2) Upon receipt of a petition, the Office of the Judges of Compensation Claims, or upon motion, the assigned judge of compensation claims, shall review the petition and shall dismiss the petition or any portion of the petition which does not comply with the requirements of this section, does not meet the definition of specificity under s. 440.02(40), and does not on its face specifically identify or itemize the following:

- The name, address, and telephone number, and social security number of the employee.
- The name, address, and telephone number of the employer.
- A detailed description of the injury and cause of the injury, including the location of the occurrence and the date or dates of the accident and the county in this state or, if the accident occurred outside of this state, the state where the accident occurred.
accident occurred.

(d) A detailed description of the employee’s job, work responsibilities, and work the employee was performing when the injury occurred.

(e) The specific time period for which compensation and the specific classification of compensation were not timely provided.

(f) The specific date of maximum medical improvement, character of disability, and specific statement of all benefits or compensation that the employee is seeking. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date on which such permanent benefits are claimed to begin.

(g) All specific travel costs to which the employee believes she or he is entitled, including dates of travel and purpose of travel, means of transportation, and mileage and including the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier.

(h) Specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment.

(i) The type or nature of treatment care or attendance sought and the justification for such treatment. If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician’s request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) The specific amount of compensation claimed and the methodology used to calculate the average weekly wage, if the
average weekly wage calculated by the employer or carrier is disputed. There is a rebuttable presumption that the average weekly wage and corresponding compensation calculated by the employer or carrier is accurate.

(k) Specific explanation of any other disputed issue that a judge of compensation claims will be called to rule upon.

(l) The signed attestation required pursuant to s. 440.1915.

(m) Certification and evidence of a good faith attempt to resolve the dispute pursuant to subsection (4).

The dismissal of any petition or portion of such a petition under this subsection is without prejudice and does not require a hearing.

(4)(a) Before filing a petition, the claimant, or if the claimant is represented by counsel, the claimant’s attorney, shall make a good faith effort to resolve the dispute. The petition must include:

1. A certification by the claimant or, if the claimant is represented by counsel, the claimant’s attorney, stating that the claimant, or attorney if the claimant is represented by counsel, has made a good faith effort to resolve the dispute and that the claimant or attorney was unable to resolve the dispute with the carrier, or the employer if self-insured; and

2. Evidence demonstrating such good faith attempt to resolve the dispute as described in the certification.

(b) If the petition is not dismissed under subsection (2), the judge of compensation claims has jurisdiction to determine, in his or her independent discretion, whether a good faith
effort to resolve the dispute was made by the claimant or the claimant’s attorney. If the judge of compensation claims determines that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition for benefits, the judge of compensation claims must dismiss the petition and may impose sanctions to ensure compliance with this subsection, which may include, but are not limited to, assessment of attorney fees payable by the claimant’s attorney.

(5) (a) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. Dismissal of any petition or portion of a petition under this subsection is without prejudice.

(b) Upon motion that a petition or a portion of a petition be dismissed for lack of specificity, a judge of compensation claims shall enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed, or, if good cause for a hearing is shown, within 20 days after a hearing on the motion. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

(7) Notwithstanding the provisions of s. 440.34, a judge of compensation claims may not award attorney fees payable by the employer or carrier for services expended or
costs incurred before: prior to

(a) The filing of a petition that meets the definition of specificity under s. 440.02(40) and that includes all items required under subsection (2); or

(b) The claimant or the claimant’s attorney, if the claimant is represented by counsel, has made a good faith effort to resolve the dispute does not meet the requirements of this section.

Section 8. Paragraph (c) of subsection (11) of section 440.20, Florida Statutes, is amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(11)

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers’ compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement need not be approved requires approval by the judge of compensation claims, and only as to the attorney’s fees paid to the claimant’s attorney by the claimant. The parties need not submit any information or documentation in support of the settlement, except for as needed to justify the amount of the settlement and the attorney attorney’s fees and costs paid by the claimant to the claimant’s attorney. Neither the employer nor the carrier is responsible for any attorney attorney’s fees relating to the settlement and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after
the date the judge of compensation claims mails the order approving the settlement allocation’s recovery of child support arrearages under paragraph (d) attorney’s fees. Any order entered by a judge of compensation claims approving the attorney’s fees as set out in the settlement under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with the requirements set forth in paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident.

Section 9. Paragraphs (h) and (j) of subsection (4) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

(4)

(h) To further expedite dispute resolution and to enhance the self-executing features of the system, those petitions filed in accordance with s. 440.192 that involve a claim for benefits of $5,000 or less shall, in the absence of compelling evidence to the contrary, be presumed to be appropriate for expedited resolution under this paragraph; and any other claim filed in accordance with s. 440.192, upon the written agreement of both parties and application by either party, may similarly be resolved under this paragraph. A claim in a petition of $5,000 or less for medical benefits only or a petition for reimbursement for mileage for medical purposes shall, in the absence of compelling evidence to the contrary, be resolved through the expedited dispute resolution process provided in this paragraph. For purposes of expedited resolution pursuant to
this paragraph, the Deputy Chief Judge shall make provision by rule or order for expedited and limited discovery and expedited docketing in such cases. At least 15 days before prior to hearing, the parties shall exchange and file with the judge of compensation claims a pretrial outline of all issues, defenses, and witnesses, including a personal attestation by the claimant’s attorney detailing his or her hours to date, on a form adopted by the Deputy Chief Judge; provided that, in no event shall such hearing may not be held without 15 days’ written notice to all parties. The personal attestation by the claimant’s attorney must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit. No pretrial hearing shall be held and no mediation scheduled unless requested by a party. The judge of compensation claims shall limit all argument and presentation of evidence at the hearing to a maximum of 30 minutes, and such hearings shall not exceed 30 minutes in length. Neither party shall be required to be represented by counsel. The employer or carrier may be represented by an adjuster or other qualified representative. The employer or carrier and any witness may appear at such hearing by telephone. The rules of evidence shall be liberally construed in favor of allowing introduction of evidence.

(j) A judge of compensation claims may not award interest on unpaid medical bills and the amount of such bills may not be used to calculate the amount of interest awarded. Regardless of the date benefits were initially requested, attorney attorney’s fees do not attach under this subsection until 45
business 30 days after the date on which a the carrier or self-
insured employer receives the petition is filed with the Office
of the Judges of Compensation Claims and unless the following
conditions are met:

1. Before the petition is filed, the claimant or the
claimant’s attorney, if the claimant is represented by counsel,
makes a good faith effort to resolve the dispute as provided in
s. 440.192(4); and

2. The petition meets the definition of specificity under
s. 440.02(40) and includes all items required under s.
440.192(2).

Section 10. Section 440.34, Florida Statutes, is amended to
read:

440.34 Attorney’s fees; costs.—
(1)(a) A judge of compensation claims may award attorney
fees payable to the claimant pursuant to this section to be paid
by the employer or carrier. An employer or carrier is not
responsible for payment of a fee, gratuity, costs, or other
consideration may not be paid for a claimant in connection with
any proceedings arising under this chapter, unless approved by
the judge of compensation claims or court having jurisdiction
over such proceedings. Attorney fees payable by the employer or
carrier and Any attorney’s fee approved by a judge of
compensation claims for benefits secured on behalf of a claimant
must equal to 20 percent of the first $5,000 of the amount of
the benefits secured, 15 percent of the next $5,000 of the
amount of the benefits secured, 10 percent of the remaining
amount of the benefits secured to be provided during the first
10 years after the date the claim is filed, and 5 percent of the

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benefits secured after 10 years.

(b) A The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this chapter which provides for an attorney’s fee in excess of the amount permitted by this section. The judge of compensation claims is not required to approve any retainer agreement between the claimant and his or her attorney is not subject to approval by a judge of compensation claims, but must be filed with the Office of the Judges of Compensation Claims. An attorney retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the injured employee shall report the amounts of such attorney fees to the judge of compensation claims having jurisdiction over the claim for benefits based on the county in which the accident occurred; or, if the accident occurred outside of this state, to the Deputy Chief Judge. Notwithstanding s. 440.22, attorney fees are a lien upon compensation payable to the claimant. The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7).

(2)(a) In awarding a claimant’s attorney fees payable by the employer or carrier attorney’s fee, the judge of compensation claims shall consider only those benefits secured by the attorney. An Attorney is not entitled to attorney’s fees are not payable by the employer or carrier for:

1. Representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not
addressed, during the pendency of other issues for the same injury;

2. Claimant attorney hours reasonably related to a benefit upon which the claimant did not prevail; or

3. Claimant attorney hours reasonably related to a petition for benefits, if the judge of compensation claims determines that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition, regardless of whether the petition is dismissed by the judge of compensation claims, the claimant, or the claimant’s attorney.

(b) The amount, statutory basis, and type of benefits obtained through legal representation must shall be listed on all attorney attorney’s fees awarded by a the judge of compensation claims which are payable by the employer or carrier. For purposes of this section, the term “benefits secured” does not include future medical benefits to be provided on any date more than 5 years after the date the petition claim is filed. If in the event an offer to settle an issue pending before a judge of compensation claims, including attorney attorney’s fees as provided for in this section, is communicated in writing to the claimant or the claimant’s attorney at least 30 days before prior to the trial date on such issue, for purposes of calculating the amount of attorney attorney’s fees to be taxed against the employer or carrier, the term “benefits secured” includes shall be deemed to include only that amount awarded to the claimant above the amount specified in the offer to settle. If multiple issues are pending before a the judge of compensation claims, such said offer of settlement must shall address each issue pending and shall state explicitly whether or
not the offer on each issue is severable. The written offer must
shall also unequivocally state whether or not it includes
medical witness fees and expenses and all other costs associated
with the claim.

(3) If any party prevails should prevail in any
proceedings before a judge of compensation claims or court,
there shall be taxed against the nonprevailing party the
reasonable costs of such proceedings, not to include attorney
attorney’s fees. A claimant is responsible for the payment of
her or his own attorney attorney’s fees, except that a claimant
is entitled to recover attorney fees an attorney’s fee in an
amount equal to the amount provided for in subsection (1) or
subsection (5) from a carrier or employer:

(a) Against whom she or he successfully asserts a petition
for medical benefits only, if the claimant has not filed or is
not entitled to file at such time a claim for temporary or
permanent disability, permanent impairment, wage loss, or death
benefits arising out of the same accident;

(b) In any case in which the employer or carrier files a
response to petition denying benefits with the Office of the
Judges of Compensation Claims and the injured person has
employed an attorney in the successful prosecution of the
petition;

(c) In a proceeding in which a carrier or employer denies
that an accident occurred for which compensation benefits are
payable, and the claimant prevailson the issue of
compensability; or

(d) In cases in which where the claimant successfully
prevails in proceedings filed under s. 440.24 or s. 440.28.
Regardless of the date benefits \underline{were} initially requested, \underline{attorney} attorney’s fees \underline{shall} not attach under this subsection until \textbf{45 business 30} days after the date \textbf{on which a} the carrier or employer, if self-insured, receives the petition that meets the definition of specificity under s. 440.02(40) and includes all items required under s. 440.192(2) is filed with the Office of the Judges of Compensation Claims. Such attorney fees do not attach unless before the petition was filed, the claimant or the claimant’s attorney, if the claimant is represented by counsel, made a good faith effort to resolve the dispute as provided in s. 440.192(4).

(4) In such cases in which the claimant is responsible for the payment of her or his own attorney’s fees, such fees are a \underline{lien upon compensation payable to the claimant, notwithstanding s. 440.22.}

(5) \underline{If any proceedings are had for review of a claim, award, or compensation order before any court, the court may, at its discretion, award the injured employee or dependent \underline{attorney fees payable an attorney’s fee to be paid by the employer or carrier, not to exceed an hourly rate of $150 per hour, but only if the employer or carrier disputes the claim, award, or compensation order and the injured employee or dependent prevails in the dispute in its discretion, which shall be paid as the court may direct.}}

(6) A judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee’s compensation into an escrow account until benefits have been secured.
(5)(7) If attorney fees are owed under paragraph (3)(a), the judge of compensation claims may award
approve an alternative attorney fees payable by the employer or carrier, attorney’s fee not to exceed $1,500 and only once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims expressly finds that the attorney's fee schedule amount provided for in subsection (1), based on benefits secured, results in an effective hourly rate of less than $150 per hour fails to fairly compensate the attorney for disputed medical-only claims as provided in paragraph (3)(a) and the circumstances of the particular case warrant such action. Attorney fees payable by the employer or carrier under this subsection are in lieu of, rather than in addition to, any other attorney fees available under this section.

Section 11. Paragraph (b) of subsection (6) of section 440.491, Florida Statutes, is amended to read:

440.491 Reemployment of injured workers; rehabilitation.—

(6) TRAINING AND EDUCATION.—

(b) When an employee who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate and requires training and education to obtain suitable gainful employment, the employer or carrier shall pay the employee additional training and education temporary total compensation benefits while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims. The benefits provided under this
paragraph are shall not be in addition to the maximum number of 104 weeks as specified in s. 440.15(2) or s. 440.15(13).

However, a carrier or employer is not precluded from voluntarily paying additional temporary total disability compensation beyond that period. If an employee requires temporary residence at or near a facility or an institution providing training and education which is located more than 50 miles away from the employee’s customary residence, the reasonable cost of board, lodging, or travel must be borne by the department from the Workers’ Compensation Administration Trust Fund established by s. 440.50. An employee who refuses to accept training and education that is recommended by the vocational evaluator and considered necessary by the department will forfeit any additional training and education benefits and any additional compensation payment for lost wages under this chapter. The carrier shall notify the injured employee of the availability of training and education benefits as specified in this chapter.

The Department of Financial Services shall include information regarding the eligibility for training and education benefits in informational materials specified in ss. 440.207 and 440.40.

Section 12. This act shall take effect July 1, 2019.